IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

CHAMBER SUMMONS NO.11 OF 2004
IN
SUIT NO.4429 OF 1996

Abdul Haque A. Aziz ..Plaintiff.

V/s.

Mohammed Rizwan ..Defendant.

Mr.Devendra Sharma for plaintiff.

Mr..R.Tripathi for defendant.

CORAM : J.P.DEVADHAR, J.

DATED : 10TH DECEMBER,2004.

P.C. :-

. Heard. This chamber summons is taken out by the defendant seeking amendment to the written statement in terms of scheduled annexed to the chamber summons.

2. It is the case of the plaintiff that by a Partnership Deed dated 19th August, 1952 the plaintiff, Abdul Kadar Alladiya (father of defendant) and one Haji Abdul Salam Haji Abdul Razaq were carrying on business of bakery in partnership with equal share in the name and style "M/s.Nagina Bakery" at Munawar Chawl, Near Masjid, Dharavi Road, Mumbai.

It is the case of the plaintiff that the said partnership was duly registered on 5th October, 1960. According to the plaintiff, there was a settlement arrived at between the abovesaid three partners on 31st December, 1985 under which the said Abdul Kadar Alladiya (father of the defendant) was to carry on the said bakery business for a period of 10 years from 1/1/1985 to 31/12/1995 and thereafter hand over the said bakery business to the plaintiff and the third partner. The said settlement deed further provided that in the event of death of said Abdul Kadar Alladiya before the expiry of 10 years, then one of his sons can carry on the bakery business for the remaining period upto 31/12/1995 subject to the terms set out therein. It is the case of the plaintiff that the said Abdul Kadar Alladiya died on 27/5/1993 and the defendant, who is the son of Abdul Kadar Alladiya carried on the bakery business as per the settlement deed. Since the defendant failed and neglected to hand over the bakery business to the plaintiff on expiry of 10 years, the plaintiff has filed the above suit against the defendant seeking a declaration that the defendant has no right, title and interest in respect of the said Nagina Bakery business and certain other reliefs, as more particularly set out in the plaint.

3. On 23rd March, 2000 the defendant had filed a written statement opposing the claim of the plaintiff. In the said written statement the defendant had disputed the execution of the partnership deed dated 19th August, 1952 as well as the settlement said to have been arrived at between the aforesaid partners on 31/12/1985. It is the case of the defendant that his father was the exclusive owner of the business and was carrying on business all along as a sole proprietor and, therefore, the plaintiff is not entitled to any relief in the suit.

4. By the present chamber summons the defendant seeks to amend the written statement so as to bring on record some documents which he came in possession after the filing of the written statement. According to the defendant, the said documents conclusively establish the contention of the defendant raised in the written statement that his father was the absolute owner of the bakery business and that throughout his life time the father of the defendant carried on business as a sole proprietor. Accordingly, it is submitted that it is absolutely essential in the interest of justice to allow the defendant to amend the written statement as per the

schedule annexed to the chamber summons.

5. Mr.Sharma, the learned counsel appearing on behalf of the plaintiff opposes the chamber summons. According to the learned counsel for the plaintiff, the amendment sought to be introduced to the written statement constitutes a totally different cause of action and, therefore, the defendant cannot be allowed to amend the written statement. The learned counsel for the plaintiff pointed out that the defendant in his written statement filed on 28th March, 2000 had stated that after the death of his father the defendant was carrying on the business as a sole proprietor of Nagina Bakery business. However, by way of amendment to the written statement, it is sought to be contended by the defendant that all the heirs and legal representatives of deceased Abdul Kadar Alladiya have not been made parties and the suit is, therefore, not maintainable. The learned counsel for the plaintiff, however, fairly stated that he has no objection for the amendment of the written statement in so far as it pertains to bring on record the documents pertaining to the ownership rights of the deceased Abdul Kadar Alladiya.

6. After hearing the counsel on both sides, it is clear that the only objection raised by the plaintiff for allowing the amendment to the written statement is that for the first time the defendant is contending that all the heirs and legal representatives of the deceased Abdul Kadar Alladiya are not made parties to the suit and, therefore, the suit is not maintainable. In my view, there is no merit in the contentions raised on behalf of the plaintiff. In the written statement filed by the defendant on 28/3/2000, nowhere it is stated by the defendant that he is the only legal heir of the deceased Abdul Kadar Alladiya. What is stated in the written statement is that after the death of Abdul Kadar Alladiya, the defendant has been carrying on the business as a sole proprietor of thereof. Therefore, there is no inconsistency in the stand taken by the defendant in the written statement filed on 28/3/2000 and the stand taken in the schedule annexed to the chamber summons.

7. In this view of the matter, there is no merit in the contentions raised on behalf of the plaintiff. Accordingly, the chamber summons is allowed in terms of prayer clause (a) with no order as to costs.

8. Defendant is directed to carry out the amendment to the written statement within 2 weeks from today.

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